

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 456

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO THE SEED INDEMNITY FUND; AMENDING SECTION 22-5102, IDAHO CODE, TO DEFINE TERMS, TO REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-5103, IDAHO CODE, TO REQUIRE ADDITIONAL CONDITIONS THAT MUST BE MET BY APPLICANTS PRIOR TO ISSUANCE OF INITIAL SEED BUYER LICENSES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-5104, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 22-5121, IDAHO CODE, TO PROVIDE THAT THERE ARE NO INDEMNITY FUND ASSESSMENTS ON SEED CROPS DEPOSITED FOR SERVICE; AND AMENDING SECTION 22-5125, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE IDAHO STATE DEPARTMENT OF AGRICULTURE SHALL NOT APPROVE OR PAY ANY CLAIM BASED ON LOSSES RESULTING FROM UNINSURABLE PERILS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-5102, Idaho Code, be, and the same is hereby amended to read as follows:

22-5102. DEFINITIONS. As used in this chapter:

(1) "Contract" means an agreement which may include, but is not limited to, those contracts commonly referred to as production, credit sale, bailment, deferred payment, deferred or price later contracts.

(2) "Delivery voucher" means a form, other than a receipt or scale weight ticket, authorized by rules of the department evidencing delivery of a producer's seed crop to a seed buyer.

(3) "Department" means the Idaho state department of agriculture.

(4) "Deposit for service" means the transfer of a seed crop to a seed buyer or a person not licensed under this chapter for the purpose of cleaning, mixing, conditioning or other services related to the seed crop, provided such services are not offered in conjunction with a stored for withdrawal agreement.

(5) "Director" means the director of the Idaho state department of agriculture.

(56) "Failure" means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy producers;

(b) A declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a producer;

(d) A failure to redeliver any seed crop stored for withdrawal or to pay producers for seed crop pursuant to the terms of an agreement; or

(e) A denial of the application for a license renewal.

(67) "Person" means any individual, firm, association, corporation, partnership or limited liability company.

1 (78) "Producer" means the owner, tenant or operator of land in this
 2 state who has an interest in the proceeds from the sale of seed crops grown
 3 on that same land. Producer does not include growers of seed crop who
 4 deposit their seed crop in a seed facility in which they have a financial or
 5 management interest, except members of a cooperative marketing association
 6 qualified under chapter 26, title 22, Idaho Code.

7 (89) "Production summary" means records that include, but are not
 8 limited to, the kind and type of seed crop, producer name and address,
 9 location and number of acres, clean seed per acre, value per pound and, when
 10 applicable, the contract number and lot identity.

11 (910) "Receipt" means a warehouse receipt.

12 (101) "Scale weight ticket" means a load slip, other than a receipt,
 13 given to a producer by a seed buyer, for transfer of the seed crop to the seed
 14 buyer. Each scale weight ticket shall be sequentially numbered, shall be
 15 recorded in triplicate and shall set forth the following:

- 16 (a) Name and address of seed buyer;
- 17 (b) Date of weighing;
- 18 (c) Producer of seed crop weighed;
- 19 (d) Kind or variety of seed crop weighed;
- 20 (e) Gross delivery weight;
- 21 (f) Tare;
- 22 (g) Net delivery weight; and
- 23 (h) Full signature of weigher or name of supervisor of scale.

24 (142) "Seed buyer" means any person having a commercial operation, its
 25 agents and employees, together with its elevators, mills, buildings, or
 26 other structures who owes or has any financial obligation to the producer for
 27 seed crop grown by that producer and transferred to the seed buyer.

28 (123) "Seed crops" means any seed crop regulated by chapter 4, title 22,
 29 Idaho Code.

30 (134) "Seed facility" means:

- 31 (a) That portion of the commercial operation of a seed buyer where seed
- 32 crop transferred to it from an unpaid producer is stored; or
- 33 (b) Where seed crop is stored for withdrawal.

34 (145) "Stored for withdrawal" means the deposit of seed crop with a seed
 35 facility by the producer for the subsequent withdrawal by that producer of
 36 the same seed crop or similar seed crop, as agreed to by the parties.

37 (156) "Transfer" means, unless otherwise defined by the parties in
 38 writing, the event when a producer or his agent delivers seed crop to the
 39 seed buyer who then gives the producer or his agent a scale weight ticket,
 40 receipt, or other written evidence of transfer.

41 (17) "Uninsurable peril" means an event or situation for which
 42 insurance coverage cannot be purchased, or for which premiums are
 43 economically prohibitive including, but not limited to, catastrophic
 44 destruction and damage that occurs gradually. Catastrophic destruction
 45 includes, but is not limited to, earthquakes, acts of terrorism and floods.
 46 Destruction that occurs gradually includes, but is not limited to, insect
 47 and rodent infestation, and mold.

48 (168) "Written evidence of transfer" means:

- 49 (a) A delivery voucher;
- 50 (b) A receipt; or

(c) A scale weight ticket.

SECTION 2. That Section 22-5103, Idaho Code, be, and the same is hereby amended to read as follows:

22-5103. LICENSES. (1) Prior to beginning operation, a person intending to operate as a seed buyer shall first procure a license from the department. Each license issued pursuant to this chapter, shall be issued for a period of one (1) year and the license or legible copy thereof shall be prominently displayed in each place of business.

(2) A seed facility endorsement showing the location of each seed facility in Idaho shall be attached to the seed buyer's license.

(3) The department is authorized to issue or renew a seed buyer license in accordance with this chapter, and the rules promulgated by the department ~~providing~~ provided each applicant meets the following conditions:

(a) Pay an application fee of up to five hundred dollars (\$500) pursuant to criteria established by rule, with the exception of those persons holding a license issued pursuant to chapter 4, title 22, Idaho Code;

(b) Submit a completed application form provided by the department, with required exhibits. The application shall include:

(i) The name of the applicant;

(ii) The names of the officers and directors if the applicant is a corporation or association;

(iii) The names of the partners if the applicant is a partnership or a limited liability company;

(iv) The location of the principal place of business;

(v) Information relating to any judgment against the applicants; and

(vi) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.

(c) Provide a sufficient and valid bond as required by this chapter;

(d) Provide a current, sufficient policy of insurance covering losses as required by this chapter;

(e) Provide the location of its seed facilities in Idaho;

(f) Provide a written schedule of conditioning, bagging and testing charges; ~~and~~

(g) Have on file a test report pursuant to sections 71-113 and 71-117, Idaho Code, from the Idaho state department of agriculture bureau of weights and measures showing approved status for any scales used for weighing received seed crops and any scales used for weighing clean weight of seed crops; and

(h) Provide with the initial license application an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant showing that the applicant has and does maintain a balance sheet with current assets not less than current liabilities, a statement of profit or loss, a statement of net worth and a statement of cash flows, all of which have been prepared according to generally accepted accounting principles not more than twelve (12) months prior to the date of the initial license application and additional financial information as determined by the director.

1 (4) All fees collected, pursuant to this chapter, for license
2 application and renewal shall be deposited in the seed indemnity fund.

3 (5) All materials required for renewal of a license shall be received
4 by the department prior to the expiration date of the current license. A
5 license which has expired may be reinstated by the department upon receipt of
6 all necessary licensing materials required by the provisions of this chapter
7 and a reinstatement fee in an amount up to one thousand dollars (\$1,000)
8 pursuant to criteria established by rule, providing that this material is
9 filed within thirty (30) days from the date of expiration of the current
10 license.

11 (6) A delivery of seed crop between producers, none of whom are seed
12 buyers, shall be exempt from the provisions of this chapter.

13 SECTION 3. That Section 22-5104, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 22-5104. BONDS -- IRREVOCABLE LETTERS OF CREDIT -- CERTIFICATES OF
16 DEPOSIT -- SINGLE BOND. Every person applying for a license shall execute
17 and file with the department a good and sufficient bond issued by an insurer
18 authorized to transact such insurance in this state. The bond shall be
19 in favor of the seed indemnity fund to secure the faithful performance of
20 the applicant's obligations under this chapter, and of such additional
21 unpaid obligations assumed under agreements with producers of seed crops
22 transferred to or deposited with the applicant. Said bond shall be in such
23 form and amount, shall have such surety or sureties, and shall contain
24 such terms and conditions as the department may prescribe to carry out
25 the purposes of this chapter. Whenever the department determines that a
26 previously approved bond is insufficient, it may require an additional
27 bond or bonds conforming with the requirements of this chapter. Unless the
28 additional bond is given within the time fixed by a written demand therefor,
29 the license may be suspended or revoked.

30 At the discretion of the director, any person required to submit a bond
31 to the department may give to the department an irrevocable letter of credit
32 or certificate of deposit payable to the seed indemnity fund in lieu of the
33 bond required herein. A certificate of deposit shall be submitted with an
34 audited or reviewed financial statement prepared in accordance with the
35 rules of the department by an independent Idaho certified public accountant
36 or Idaho licensed public accountant. The principal amount of the letter of
37 credit or certificate of deposit shall be the same as that required for a
38 surety bond pursuant to this chapter. The letter of credit or certificate
39 of deposit shall remain on file with the department until it is released,
40 canceled or discharged by the director or until the director is notified
41 ninety (90) days in advance, by registered or certified mail, return receipt
42 requested, that the letter of credit or certificate of deposit is renewed,
43 canceled or amended. Failure to notify the director may result in the
44 suspension or revocation of the seed buyer license. The provisions of this
45 chapter that apply to a bond apply to each letter of credit or certificate of
46 deposit given in lieu of such bond. Under the provisions of this chapter, an
47 irrevocable letter of credit or certificate of deposit shall not be accepted
48 unless it is issued by a national bank or federal thrift institution in Idaho

1 or by a state-chartered bank or thrift institution authorized to conduct
2 business in Idaho and insured by the federal deposit insurance corporation.

3 If a seed buyer is also licensed pursuant to either chapter 2 or 5,
4 title 69, Idaho Code, that seed buyer may obtain a single bond, certificate
5 of deposit or irrevocable letter of credit as surety for both chapter 51,
6 title 22, Idaho Code, and chapter 2 or 5, title 69, Idaho Code. The bond,
7 certificate of deposit or irrevocable letter of credit shall be made out in
8 favor of the commodity indemnity fund and the seed indemnity fund. In the
9 event a seed buyer fails as defined in section 22-5102(56), Idaho Code, and
10 a single bond, certificate of deposit or irrevocable letter of credit is
11 written in favor of the commodity indemnity fund and seed indemnity fund, the
12 proceeds of the bond, certificate of deposit or irrevocable letter of credit
13 will be allocated based on the dollar amount of the verified claims approved
14 pursuant to chapter 51, title 22, Idaho Code, and chapter 2, title 69, Idaho
15 Code.

16 SECTION 4. That Section 22-5121, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 22-5121. ASSESSMENTS. Every producer shall pay an assessment for
19 deposit in the seed indemnity fund according to the provisions of this
20 chapter and rules promulgated by the department. A delivery of seed
21 crop between producers, none of whom are seed buyers, is exempt from the
22 collection and payment of assessments. Assessments shall be collected on
23 the gross dollar amount, without any deduction, owed to, or paid, or to be
24 paid, on behalf of the producer of the seed crop.

25 (1) The initial rate of the assessment shall be five-tenths of one
26 percent (.5%). Changes in the rate will be established by criteria in the
27 rules of the department. However, the producer's annual assessment shall
28 not exceed five-tenths of one percent (.5%).

29 (2) If seed crop is stored for withdrawal, the assessment shall not
30 exceed one-half cent (1/2¢) per pound, based on clean weight or, if not
31 available, estimated clean weight, per twelve (12) month period, payable at
32 time of withdrawal.

33 (3) There are no indemnity fund assessments on seed crops deposited for
34 service.

35 SECTION 5. That Section 22-5125, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 22-5125. PROOF OF CLAIMS -- PROCEDURE -- HEARING. After the director
38 has declared a failure, the department shall process the claims of producers
39 having paid or owing assessments who: (a) produce written evidence of
40 transfer together with the amounts of their unpaid claims, and (b) have
41 "stored for withdrawal" and provide written evidence of deposit.

42 (1) The department shall give written notice to and provide a
43 reasonable time of not less than thirty (30) days and not more than sixty
44 (60) days for producers to file their written verified claims, including any
45 written evidence, with the department.

46 (2) The department shall investigate each claim and shall notify
47 in writing each claimant, the seed buyer and the advisory committee of

1 the department's determination as to the validity and amount of each
2 claim. A claimant or seed buyer may request a hearing on the department's
3 determination within twenty (20) days of receipt of written notification
4 of the determination pursuant to chapter 52, title 67, Idaho Code. Upon
5 determining the amount and validity of the claim, the director shall pay
6 to the claimant an amount equal to ninety percent (90%) of the approved
7 claim from the seed indemnity fund. Prior to any payment from the fund to
8 a claimant, the claimant shall be required to subrogate and assign to the
9 department his right to any recovery from any other source. The claimant
10 shall be entitled to seek recovery of the remaining ten percent (10%), which
11 was not assigned to the department. The procedure to determine the value of
12 any claim will be established by rules.

13 (3) In the event of a shortage or inability to meet financial
14 obligations, the department shall determine each producer's pro rata
15 share of available seed crops and any deficiency shall be the claims of
16 the producers. Each type of seed crop shall be treated separately for the
17 purpose of determining shortages.

18 (4) The director shall not approve or pay any claim based on losses
19 resulting from transactions with persons unlicensed pursuant to this
20 chapter. The director shall not approve or pay any claim made on the seed
21 indemnity fund if the claim is for the payment of interest, attorney's fees,
22 ancillary costs, or punitive damages. The director shall not approve or pay
23 any claim based on losses resulting from uninsurable perils.

24 (5) If a producer's claim reveals that the assessment has not been paid
25 or collected, and the claim is otherwise valid, the amount of the assessment
26 shall be deducted from the claim payment.